265, where Judge Gray says: "The rule that the courts of no country execute the penal laws of another, applies not only to prosecutions and sentences for crimes and misdemeanors, but to all writs in favor of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue or other municipal laws, and to all judgments for such penalties." And he takes this with a negative, *i. e.*, that the rule extends no further. To his mind, "penal" here is synonymous with the proper meaning of "criminal;" that is, covering breaches of duty which confer no rights on individuals, and of which the State alone has cognizance.

The Privy Council unanimously accept the reasoning of the dissenting Maryland judges, though the Court of Appeal, from which the case was appealed, had been equally divided. They go over with care the few cases in which the language seems against their decision, and point out clearly that the Maryland decision — the only one directly in point — is based on a failure to distinguish the two meanings of the word "penal." Lord Watson, who delivered the opinion, states that their lordships had already intimated that the term was inadequate, having a perfectly proper sense in which it fails to mark entirely that distinction between civil rights and criminal wrongs which is the very essence of the international rule. Though there is a little direct authority on the point, it would seem that the English decision must be everywhere accepted; and thus one more of the ghosts born of carelessness in the use of the words be laid at rest.

RECENT CASES.

AGENCY — VICE-PRINCIPAL — MASTER AND SERVANT. — In Indiana, a baggage-master on a railroad train is considered a fellow-servant with the conductor of another train, through whose negligence a collision occurs. *Kerlin* v. *Chicago, P. & St. L. R. Co. et al.*, 50 Fed, Rep. 185 (Ind.).

A brakeman on one train is a co-servant of the conductor and engineer of another train, and if killed in a collision caused entirely by the negligence of the latter, the company is not liable. *Baltimore & O. R. Co.* v. *Andrews*, 50 Fed. Rep. 728 (Ohio).

Railroad Co. v. *Ross*, 112 U. S. 377, is distinguished in both of the above cases; in the former one, Judge Baker, in speaking of the Ross case, says, "It reaches the borderline, and ought not to be held to be controlling, except in cases presenting the same facts."

ASSUMPSIT — IMPLIED PROMISE TO PAY FOR USE OF PROPERTY. — Where the owner of premises has put in a telephone under a contract with the company to pay a stated sum each month for a period not expired, the occupant of the premises who uses the telephone is liable upon an implied promise to repay the owner. *McSorley* v. *Faulkner*, 18 N Y. Supp. 460 (Common Pleas of N. Y. City and County).

This holds that a promise will be implied to pay for the use of another's property, although such use causes no loss to the owner. It seems contrary to *Phillips* v. *Homfray*, 24 Ch. Div. 439, 461-463, in which case it was held that where one had carried coals from his mines through passages under the plaintiff's farm, no action in the nature of contract would lie against him or his executor.

ATTACHMENT — RIGHTS OF JOINT DEBTOR. — Plaintiff was jointly indebted to a third person under a mortgage and lien on certain property to secure payment of a joint debt. He sold out his interest to his co-debtor, under an agreement that the co-debtor should pay all outstanding obligations. Plaintiff then paid the debt secured by the mortgage, taking an assignment thereof, and attached the property covered by the mortgage. *Held*, that he acquired no rights thereby which he could enforce in an action to try title against a claimant of the property. *Allison* v. *Patterson*, 11 So. Rep. (194 Ala.).

BAILMENT — ACTION BY BAILEE. — A is in possession of B's horse to sell the same, with permission to use until the sale is made. By the negligence of the defendant company the horse is frightened and injured while being driven by A's servant. *Held*, that A., the bailee, being under no liability to the bailor for the injury to the horse, could not recover. *Claridge* v. *So. Staffordshire Tramway Co.* [1892], 1 Q. B. 422 (Eng.).

This case is opposed to what is the established American and what has been understood hitherto to be the established English doctrine. Sedgwick on Damages, 8th ed. §§ 76-78, and cases there cited; Holmes on the Common Law, pp. 173—175; *Sutton* v. *Buck*, 2 Taunt. 302 (1810); *Burton* v. *Hughes*, 2 Bing. 173 (1824).

The disputed point has been whether the bailor might also have an action in any form, *Totan* v. *Cross*, 2 Camp. 464 (1810); *Nichols* v. *Bastard*, 2 C. M. & R. 659 (1835); *Mardus* v. *Williams*, 4 Exch. 339 (1849); but the right of action in the bailor has not been held to limit in any way the right of the bailee to sue, and (the bailor not having already sued), to recover full damages. *Sutton* v. *Buck*; *Burton* v. *Hughes*; *Nichols* v. *Bastard* at p. 660 (*semble*); *Mardus* v. *Williams* at p. 344 (*semble*) *supra*.

BILLS AND NOTES — FORGERY — DRAWER'S RIGHTS. — Defendant bank discounted a forged draft, and indorsed it to A for collection. A presented it to plaintiff bank, the drawee, which paid it, and defendant received the money. *Held*, that the plaintiff could recover the money paid as the defendant, by its indorsement, gave the paper an appearance of genuineness which would put the plaintiff off its guard in paying. *First Nat. Bank of C.* v. *Ind. Nat. Bank*, 30 N. E. Rep. 808 (Ind.).

This decision of the Appellate Court of Indiana is in direct opposition to well established authority; cf. Ames, The Doctrine of *Price* v. *Neal*, 4 Harvard Law Rev. 297.

CONSPIRACY — CONTRACT IN RESTRAINT OF TRADE. — *Held*, in affirmance of the opinion of Lord Coleridge in 21 Q. B. D. 544, and of the majority opinion of the Court of Appeal in 23 Q. B. D. 598 (Lord Esher dissenting), that a combination of steamship companies, formed for the purpose of getting a monopoly of the China tea trade, was not illegal as in restraint of trade. *Held also*, that there was no liability to the plaintiffs for malicious conspiracy, although the means employed by the defendants in carrying out their purposes were (1) the exclusion of the plaintiffs from the combination; (2) an offer of a rebate to shippers on condition that they would not deal with the plaintiffs, but exclusively with defendants; (3) the sending of special ships to the plaintiffs' port of shipment in order by competition to deprive the plaintiffs' vessels of profitable freight; (4) the offer at the plaintiffs' port of shipment of freights at a rate which would not repay a shipowner for his adventure, in order to sweat freights and frighten the plaintiffs from the field; (5) warnings to shipping agents that if they shipped by plaintiffs' vessels, they, the defendants, would have no dealings with them. *Mogul S. S. Co.* v. *McGregor, Gow, & Co.* [1892], A. C. (Eng.).

On point of restraint of trade, compare *Morris Run Coal Co.* v. *Barley Coal Co.*, 658 Penn. 173, and *People* v. *North River Sugar Refining Co.*, 61 N. Y. Sup. C't, 354, showing a contrary American tendency.

On the second point this case shows the line beyond which the English Courts will not go in actions for malicious injury. No injury will be deemed malicious which is caused in the course of trade by competition, however fierce, although the plaintiff's competitors are acting in combination. See Bowen, J., pp. 613-14, in 23 Q. B. D. Cf. dissenting opinion of Lord Esher at p. 609 in 27 Q. B. D. Cf. also *Walker* v. *Cronin*, 107 Mass. 555; *Daly* v. *Winfree*, 16 S. W. Rep. 111.

CONSTITUTIONAL LAW — ANTI-TRUCK LAW. — An Act made it unlawful for any person, etc., engaged in manufacturing or mining business in the State to be interested directly or indirectly in keeping a truck store or any store for furnishing supplies, tools, etc., to the employees while engaged in manufacturing or mining. A penalty was imposed for a breach of this law; but no similar restrictions were imposed on employers engaged in other kinds of business. *Held*, that the Act was unconstitutional, as it deprived persons of property rights without due process of law. *Frorer* v. *People*, 31 N. E. Rep. 395 (Ill.).

The Supreme Court of Illinois here adds its weight to the decisions in Pennsylvania, West Virginia, and Massachusetts declaring unconstitutional legislative restrictions on the contracts or other business relations of particular classes of employers and employees. Cf. *Godcharles* v. *Wyeman*, 113 Pa St. 431; *State* v. *Goodwill*, 33 W. Va., 179; *State* v. *Fire Creek etc., Coal Co.*, 33 W. Va. 188; *Cow* v. *Perry*, 28 N. E. Rep. 1126 (Mass.). See also *Millet* v. *People*, 117 Ill. 294, and *People* v. *Gilson*, 117 N. Y. 389.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — CARRIERS OF PASSENGERS OF DIFFERENT RACES. — A State statute requiring officers of railroad companies to assign passengers to coaches or compartments set aside for the use of the race to which

they belong, is a regulation of commerce, which though valid as applied to domestic passengers is unconstitutional as applied to interstate passengers, being in violation of the exclusive right vested in Congress to regulate commerce between the States. *State* v. *Hicks*, 44 La. Ann., 11 So. Rep. 74.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE. — St. 1891, c. 58, forbids the manufacture or sale or offering for sale of any article in imitation of yellow butter, and provides that the Act shall not be construed as forbidding the manufacture or sale of oleomargarine in a distinct form such as will advise the consumer of its real character. *Held*, that this Act prohibits only deception in the sale of oleomargarine for butter, not commerce in it, and although it prevents sales of colored oleomargarine even when brought in original packages from other States, it is a valid police regulation, and not an unconstitutional interference with interstate commerce. *Com.* v. *Huntley*, 30 N. E. Rep. 1127 (Mass.). The court cites and agrees fully with the doctrine of *Leisy* v. *Hardin*, 135 U. S. 100.

CONSTITUTIONAL LAW — POWER TO PUNISH FOR CONTEMPT. — An Act creating a board of tax commissioners, with power to summon and examine witnesses, gave such board power to fine and imprison for contempt. *Held*, that this power violated Const. art. 3, § 1, since the board is a part of the State executive department, and the courts alone have power to punish for contempt. *Langenberg, Sheriff*, v. *Decker*, 31 N. E. Rep. 190 (Ind.).

CONTRACT — OFFER OF REWARD. — The proprietors of a patent medicine offered a reward of £100 to anyone who should contract influenza after using the medicine according to directions. *Held*, that there was a valid contract between the company and a person who fulfilled all the conditions, with knowledge of the offer. *Carlill* v. *The Carbolic Smoke Ball Co.*, [1892] 2 Q. B. 484.

The point is quite a novel one, and the decision seems sound.

CORPORATIONS — PREFERENCE. — *Held*, that an insolvent corporation cannot prefer the debts of a member of its governing board. *Corey et al.* v. *Wadsworth*, 11 So. Rep. 350 (Ala.). *Corrugating Co.* v. *Thatcher*, 6 So. Rep. 366, 87 Ala. 458, overruled.

DOWER — WIDOW'S RIGHTS IN UNOPENED MINES. — A grant of dower in lands of her deceased husband, valuable solely as mineral lands, includes their use, and entitles the widow to the proceeds of mining leases thereof, though the mines were not opened before her husband's death. *Seager* v. *McCabe*, 52 N. W. Rep. 299 (Mich.).

This is a well-considered departure from the common law and from the text-books (Washb. Real Prop. 166), but it carries out the tendency of American courts, spoken of in *Gaines* v. *Mining Co.*, 33 N. J. Eq. 603; though the precise point as to unopened mines has not arisen here before.

ELECTIONS — PRINTED BALLOTS — WRITTEN ALTERATIONS. — A Louisiana statute directs "that all the names of persons voted for shall be printed on one ticket, or ballot, of white paper, of uniform size and quality, to be furnished by the secretary of state." *Held*, that the name of a candidate written on the face of an election ticket in place of the name of another candidate printed on the ticket should not be counted in ascertaining the result of the election. *State ex rel. Mize* v. *McElroy, Returning Officer*, 11 So. Rep. 133 (La.).

The court say that constitutional and statutory provisions for the conduct of elections are either mandatory or directory; and a violation of mandatory provisions will avoid the elections, without regard to the nature of the person guilty of the violation, and without reference to the result. 6 Amer. and Eng. Enc. Law, p. 325.

EQUITY — COVENANT BY LESSOR — SPECIFIC PERFORMANCE — INJUNCTION. — The defendant lessors covenanted with the plaintiff lessee of a flat to provide a porter resident in the building, to be constantly in attendance within, in person or by some trustworthy assistant. The lessors appointed a cook to reside on the premises, and permitted him to carry on his business as cook at another place, and delegate his duties as porter to boys and charwomen. Plaintiff prays for (1) an injunction to restrain defendant from employing as porter any person who was not resident and constantly in attendance, and able and willing to act as the servant of the plaintiff according to the agreement; (2) specific performance of the agreement to appoint a resident porter in charge of the block; (3) damages.

A. L. Smith, J.: "I will grant an injunction, or decree specific performance of the covenant, if that is the more appropriate course." *Ryan* v. *M. T. W. Chambers Ass'n*, [1892] 1 Ch. 472 (Eng.).

Quære whether the covenant in this case was a fit subject for specific performance. Although the court might decree that the lessor should appoint a competent porter, the

right to remove the porter at pleasure was expressly reserved to the lessor by the contract, and the court could hardly undertake to inquire into the merits and demerits of each successive porter. If by affirmative decree specific performance could not be given, the court should not have granted an injunction. There was no negative covenant, and an injunction against the breach of an affirmative covenant, which the court acknowledges it cannot enforce specifically, presents the same difficulties as specific enforcement, being a mere subterfuge to wipe out the necessary and well-recognized distinction between covenants which are in their nature enforceable and those which are not. See *Johnson* v. *Shrewsbury & Birmingham R'y Co.*, 3 De Gex, M. & G. 913, at pp. 930-932; *Whitford Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416.

EXTRADITION — INTERSTATE. — A person brought from one State into another upon a criminal charge named in the extradition proceedings becomes subject to the jurisdiction of the courts of the State to which he is brought, and he may be discharged and rearrested upon a different charge. *People* v. *Cross*, 19 N. Y. Supp. 271 (Sup. Ct.).

The authorities are in conflict, as the court shows. A different rule prevails in cases of international extradition. *U. S.* v. *Rauscher*, 119 U. S. 407.

HUSBAND AND WIFE — ADVERSE POSSESSION OF LAND BY WIFE. — Defendant, under a void decree of divorce and a partition of property incident thereto, occupied for the period of limitation a certain lot of land formerly belonging to her husband, claiming it as her own. *Held*, in an action by the grantee of defendant's husband, that defendant could set up, as against her husband and those claiming under him, the defence of adverse possession. *Warr* v. *Houeck*, 29 Pac. Rep. 1117 (Utah).

The Utah Married Woman's Statute is in the common form, merely providing that "either spouse may sue or be sued," etc. This decision, implying that the husband had had a right either of action or of entry against the wife, is contrary to the weight of authority; such statutes being in general strictly construed as regards the rights of husband and wife against each other.

INJUNCTION — ERECTING STATUE — RIGHT TO PRIVACY. — A person may enjoin the making and placing on exhibition of a statue of a dead relative, unless such relative was a public character. *Schuyer* v. *Curtis*, 19 N. Y. Supp. 264 (Sup. Ct.).

This affirms the decision commented upon in 5 Harv. Law Rev. 148.

INTERSTATE COMMERCE ACT — DISCRIMINATION. — The issuance of "party rate" tickets, each good for a party of ten or more persons, at the rate of two cents per mile, while single passengers are charged three cents, is neither an unjust discrimination nor an undue or unreasonable preference or advantage within the meaning of the Interstate Commerce Act, when such tickets are offered to the public generally. Brown, J., says: "It was not intended [in passing the Act] to ignore the principle that one can sell at wholesale cheaper than at retail." *Interstate Commerce Commission* v. *Baltimore & O. R. Co.*, 12 Sup. Ct. Rep. 845.

REAL PROPERTY — RIPARIAN RIGHTS. — A fresh water stream at low tide ran through a tidal channel from which the tide wholly ebbed. *Held*, that the boundary of this stream was not "low water mark" in the meaning of the colony ordinances of 1641, 1647; and such channel was not the boundary to the land of the adjoining proprietors. Field, C. J., Knowlton and Lathrop, J. J., dissent. *Tappan* v. *Boston Water Power Co.*, 31 N. E. Rep. 703 (Mass.).

REAL PROPERTY — EASEMENTS — LATERAL SUPPORT. — Defendant, preparing to lay a foundation, dug a trench on his own land, adjoining plaintiff's land, thereby causing plaintiff's building to fall. In suit for damages, plaintiff alleged a want of proper care on defendant's part, in that he did not dig the trench in sections, though that would have added to the expense. *Held*, that plaintiff could recover if the fall of the building was caused by a want of ordinary care on defendant's part.

Sherwood, C. J., dissented, on the ground that the right to lateral support is a right to support of the land only; it being shown here that the land would not have fallen had no building been on it, there should be no recovery. *Larson* v. *Metrop. St. Ry. Co.*, 19 S. W. Rep. 416 (Mo.).

It is submitted that the dissenting judge is right. The general American rule is to allow damages only for the injury to the land, and that only when the land in its natural state would have fallen. See 2 Washburn Real Prop. (5 ed.) pp. 380-382.

STATUTE OF FRAUD — TRANSFER OF PRE-EMPTION CLAIM. — Defendant, having applied for the pre-emption of certain land, orally sold the pre-emption to L, who sold to plaintiff, part of the purchase-money only being paid down, remainder to be paid when the deed was made out. Plaintiff now offers to complete the payments, and demands a conveyance; he has occupied and improved the land. *Held*, in answer to

the defence of the "Statute of Frauds," that a deed in writing is not essential to the transfer of a pre-emption claim. A verbal sale to one who immediately occupies, is sufficient. *Hickman* v. *Withers*, 19 S. W. Rep. 138 (Texas).

The court follows 10 Tex. 455, but, it is submitted, should have decided *contra*. The pre-emption claim is an interest in land, and, as such, within the terms of the statute.

STATUTE OF LIMITATIONS — CONSTRUCTION. — Under a Minnesota Statute (Gen. St. 1878, c. 66, § 16) providing that "when a cause of action has arisen in a State or Territory out of this State, and by the laws thereof an action thereon cannot there be maintained by reason of the lapse of time, an action thereon cannot be maintained in this State,' — *held*, that though the cause of action arose in Wisconsin, yet since it subsequently came under the law of Iowa and continued long enough to be a bar under the Iowa statute, it is a bar in Minnesota; although in Wisconsin, where the cause of action first arose, the operation of the statute would have been suspended by reason of defendant's absence from the jurisdiction. *Luce* v. *Clarke*, 51 N. W. Rep. 1162 (Minn.)

Osgood v. *Artt*, 10 Fed. Rep. 365 (Ill.), — the only other case on the point, — *accord*.

TAX SALE — REDEMPTION — EXTENDING TIME — CONTRACT OF PURCHASER. — The right of a purchaser other than a State, or some governmental agency acting as such, at a sale of lands for taxes under a statute which provides that the purchaser or his assignee shall have a conveyance of the land unless the land shall be redeemed within one year next succeeding the sale, is a contract right; and a statute passed subsequent to such sale, which proposes to extend the period allowed by the former Act for redeeming the land from the sale, is a violation of the contract, and hence of no effect as to such purchaser or his assignee. *Hull* v. *State ex rel. Rollins*, 11 So. Rep 97 (Fla.).

The court approve Cooley's criticism on *Gault's Appeal*, 33 Pa. St. 94, where it was held that the time for redemption might be extended from one to two years, the reasoning being based on the liberal construction to be put upon redemption laws. See Cooley's Constitutional Limitations, p. 291, and Cooley on Taxation (2d ed.), pp. 544, 545.

TORTS — NEGLIGENCE. — A, a manufacturer of goods not ordinarily of a dangerous nature, put on the market for use a step-ladder. At time of sale, neither he nor the vendee knew or could know it was in fact negligently made. *Held*, that B, a servant of a subsequent vendee, having no contract relation with A, could recover for injury from using it. *Schubert* v. *J. R. Clarke Co.*, 51 N. W. Rep, 1103 (Minn).

This applies to the full the principle laid down by Brett, M. R., announced in *Heaven* v. *Pender*, L. R. 11 Q. B. Div. 503.

TRUSTS — FOLLOWING PROCEEDS OF PARTNERSHIP MONEY. — A partner insured his life for his wife's benefit, and paid the premiums with money improperly taken from partnership funds. *Held*, the wife's insurable interest in her husband's life is her own property, so that the proceeds of the policy are not solely the result of partnership money, and cannot be impressed with a trust, but only with a lien for the amount of the premiums and interest. *Holmes* v. *Gilman*, 19 N. Y. Supp. 151 (Sup. Ct.).

REVIEWS.

SELECT CASES ON EVIDENCE AT THE COMMON LAW. WITH NOTES. By James Bradley Thayer. Cambridge: Charles W. Sever, 1892. pp. 1229.

The aim of the author has been chiefly to prepare a book for the use of students. We have no hesitation in giving the work our hearty approval. The first chapter contains a short sketch of the jury, its duties, and mode of proceeding in early times. It contains also the leading cases on topics which, although strictly not a part of the law of evidence, are usually so treated; for example, the burden of proof, presumptions, and the respective provinces of the court and the jury. The next three chapters are devoted to the rules on which evidence is excluded. The fifth and last chapter takes up the subject of witnesses, their competency, privilege, and finally the method of examination. As all the leading cases on the various subjects are systematically arranged, the book will be